

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1046 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1-Yes, 2 to 5-No.
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KALAJI POPATJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR PRADYUMAN B BHATT for Petitioner
MR.S.A.PANDYA,ADDL.PUBLIC PROSECUTOR for the
Respondent.

CORAM : MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE K.R.VYAS

Date of decision: 16/10/96

ORAL JUDGEMENT

PER K.R.VYAS,J.

1. The appellant Kalaji Popatji Thakor has challenged the judgment and order of conviction and

sentence passed in Sessions case No. 86/94 by the learned Additional Sessions Judge, Mehsana to suffer R.I. for ten years and a fine of Rs.1000/- i/d R.I. for one year for the offence u/s 376 IPC, R.I. for three years and a fine of Rs.500/- i/d R.I. for 15 days for each of the offences u/s 363 and 366 IPC and R.I. for one year and a fine of Rs.500/- i/d R.I. for 15 days for the offence u/s 506 (2) IPC. All these sentences were directed to run concurrently.

2. As can be seen from the Charge, Ex.4, it was alleged that the appellant kidnapped minor girl Madhu on 24-12-93 at about 6.30 a.m. from the lawful guardianship of her father-the complainant, and compelled her to marry with him against her will and seduced her to illicit intercourse by taking her to different places. The appellant, while denying the charges levelled against him pleaded not guilty and has stated that he has been falsely implicated. The learned Judge, after appreciating the evidence, by his judgment and order dated 29th September, 1994, convicted the appellant and passed the order of sentence as stated in para 1 of this judgment.

3. Mr. P.B.Bhatt, learned Advocate appearing for the appellant, at the outset submitted that looking to the proved age of the prosecutrix and other circumstances on record, he is not in a position to challenge the order of conviction. He, however, pressed this appeal on the question of sentence only in view of the young age of the appellant and other circumstances on record. In the submission of Mr. Bhatt, the sentence of 10 years R.I. imposed against the appellant for committing the offence under section 376 is too harsh and the same is required to be interfered with.

4. In view of the School Leaving certificate, Ex.28 and the extract from the Register of Birth and Death, Ex.32, which are duly proved, there is no dispute to the fact that the prosecutrix Madhu was born on 2-7-1979. The offence took place on 24-12-1993 when Madhu was kidnapped from the lawful custody of her father-the complainant. In view of this, on the day of the offence, Madhu was 14 years, 11 months and 22 days of age and was thus a minor girl. In view of this factual position, the appellant is guilty of committing the offences punishable under sections 363, 366, 376 and 506 (2) of the Indian Penal Code. The prosecutrix in her evidence, Ex.9, has stated that when she was going with her sister Sandha for labour work, at the point of knife the appellant took her in the rickshaw to village Nani Kadi threatening to

kill her if she raised shouts. From there they had gone to Viramgam and Jamkhambhaliya and from there to an unknown village and stayed there in a room attached to Santoshi Mata temple. In the said room, it is alleged, the appellant had forcible intercourse with her. According to the prosecutrix, she stayed with the appellant for about a month and during this period every day the appellant used to have sexual intercourse with her against her will. After about a month, the police of Kadi arrested them. Thereafter she was medically examined. The doctor noticed that she had a pregnancy of about one and half months. Reading the evidence of the prosecutrix Madhu, there is no manner of doubt that she was a consenting party in going away with the appellant, visiting the different places. Not only that, she willingly offered herself to the appellant to have sexual intercourse. This is quite apparent from the fact of her stay with the appellant for a period of about one month without making any attempt whatsoever to leave the company of the appellant. She did not even try to inform anybody about the illegal confinement when she had ample opportunity to do so. However, the fact remains that she was a minor and even if she had given consent for taking her away from the lawful custody of her guardian and have sexual intercourse with the appellant, the appellant cannot escape the charge for having committed the offences alleged against him. In view of this, there is no option but to hold that the appellant is guilty of the charges levelled against him. Under the circumstances, we confirm the order of conviction passed by the learned trial Judge.

5. That takes us to the question of sentence. There is no dispute to the fact that the appellant was aged 20 years on the day of framing the charge against him. It is also not in dispute that the appellant was residing just opposit the house of the complainant and was also doing labour work alongwith prosecutrix. Considering the admission of the complainant PW 1, Ex.7, Daduji Savaji, in his evidence has stated that the appellant was residing opposite to his house; they all were doing labour work; they were originally of the same village and the appellant was also related to him and having trust in him, Madhu had gone with the appellant to Kathiyawad, it is clear that the complainant, in fact, permitted both of them to go out of the village Kadi. It is a fact that instead of filing the complaint before the police immediately no sooner he was informed that the appellant had taken away his daughter Madhu, the complainant waited for about five days and thereafter filed the complaint prepared by a lawyer in the Court of the learned Judicial

Magistrate, First Class, Kadi . This conduct, on the part of the complainant, who is the father of the prosecutrix, would definitely suggest that the appellant had not taken away Madhu against her will but on the contrary both of them visited different places with the consent and connivance of the complainant. In view of this, we are of the opinion that the allegations made by the prosecutrix of threat, coercion etc., against the appellant in taking her away are nothing but after thought and the possibility of making such allegations by the prosecutrix at the instance of the complainant cannot be ruled out. In view of this we feel that it would be too harsh to impose a sentence of 10 years R.I. on the appellant for committing the offence punishable under section 376 of the Indian Penal Code. The appellant, through Jail, has submitted the marriage certificate alleged to have taken place between the appellant and the prosecutrix. However, without giving any importance to it and without expressing any opinion regarding the legality thereof, we only observe that the appellant as well as the prosecutrix stayed together for quite a long time and as a result Madhu in fact delivered a baby boy. This Court cannot shut its eyes to this and the subsequent developments taken place in the case and we feel that this factor is also required to be considered while considering the question of sentence. The appellant has remained in jail from the date of his arrest till date and by this time he has completed the sentence of about 2 years and 10 months. In this view of the matter, we are of the opinion that if the sentence already undergone is imposed on the appellant for the offences under which he is convicted, that will serve the ends of justice.

5. In the result, this appeal is partly allowed.

The judgment and order of conviction and sentence of imprisonment for the offence under section 506 (2) of the Indian Penal Code is confirmed.

The judgment and order of conviction of the appellant under sections 363, 366 and 376 of the Indian Penal Code is also confirmed. However, the order of sentence of imprisonment is reduced and the appellant-accused is ordered to suffer R.I. for the period already undergoing by him for each of the offences under sections 363, 366 and 376 of the Indian Penal Code.

The order of fine imposed on the appellant-accused for all the offences under which he is convicted is set aside and the fine, if paid, shall be refunded to the appellant.

Consequently, the appellant-accused is ordered to be set at liberty forthwith, if not required in

connection with any other offence.

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